Rights of Persons with Disabilities in India

Submission to the Office of the High Commissioner for Human Rights by the Youth Association for Health and Human Rights

# Introduction

According to the 2011 census, there are over 28 million persons with disabilities in India. According to the census, 20.3% of people with disabilities in India have movement disabilities, 18.9% have hearing impairments, and 18.8% have visual impairments. The 2011 census additionally collected data on mental disability for the first time, and found that 5.6% of Indians with disabilities fall into that category.

Being party to the UN Convention on the Rights of Persons with Disabilities, the government of India has recognised the importance of empowering persons with disabilities, through legislations, schemes and policies to better the life of the disabled in India.

The Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act was passed by India in 1995 in order to recognise the rights and unique requirements of the nation's handicapped population. Additionally, it included provisions for accommodations for people with impairments in positions with the government and in higher education. The older law was superseded with the Rights of Persons with Impairments Act, 2016, which raised the number of recognised disabilities from seven to 21. To further address concerns pertaining to people with disabilities, the government established the Department of Empowerment of Persons with Disabilities, which is housed within the Ministry of Social Justice and Empowerment.

The legal structure protecting persons with disabilities in India aims to safeguard their rights and create duties on various public bodies to make the country more accessible to them.

# Legal Enactments, Bodies and Government Schemes protecting the rights of persons with disabilities

The primary legislation concerned with protecting the rights of persons with disabilities in India is the [Rights of Persons with Disabilities Act, 2016](https://www.indiacode.nic.in/bitstream/123456789/2155/1/A2016_49.pdf) (hereinafter “RPwD Act”). This law replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, with the aim of codifying India’s obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which it ratified without reservations. Alongside the RPwD Act, operate the [Rights of Persons with Disabilities Rules, 2017](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_25_54_00002_201649_1517807328299&type=rule&filename=Rules_notified_15.06.pdf), which elaborate procedures and committees created by the act.

## Expansive definition of the term ‘Disability’

The RPwD Act expands the definition of the term ‘disability’, from its predecessor which was widely condemned for its restrictive scope. Under the Section 2 of the RPwD Act, a “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. This definition achieves a two-fold objective; by choosing not to list specific disabilities, it is more inclusive in nature and it focuses on the impact of the disability on the person rather than the medical extent to which the individual is inflicted.

This definition covers varying diseases, which as [listed](https://disabilityaffairs.gov.in/content/page/acts.php) by the Department of Empowerment of Persons with Disabilities, include:

1. Physical Disability
   1. Locomotor Disability
      1. Leprosy Cured Person
      2. Cerebral Palsy
      3. Dwarfism
      4. Muscular Dystrophy
      5. Acid Attack Victims
   2. Visual Impairment
      1. Blindness
      2. Low Vission
   3. Hearing Impairment
      1. Deaf
      2. Hard of Hearing
   4. Speech and Language Disability
2. Intellectual Disability
   1. Specific Learning Disabilities
   2. Autism Spectrum Disorder
3. Mental Behaviour (Mental Illness)
4. Disability caused due to-
   1. Chronic Neurological Conditions such as-
      1. Multiple Sclerosis
      2. Parkinson’s Disease
   2. Blood Disorder-
      1. Haemophilia
      2. Thalassemia
      3. Sickle Cell Disease
5. Multiple Disabilities

The act further defines persons with “benchmark disabiltiies”, who receive certain additional benefits. These persons have not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and include a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

## Right to Equality of Persons with Disabilities

Section 3 of the Act notes that the government is required to ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others. This has been expanded by various government schemes and policies, as well as judicial decisions, to include the right to [free legal aid](https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1814545), the right to [basic household and sanitation services](https://swachhbharatmission.gov.in/sbmcms/writereaddata/images/pdf/technical-notes-manuals/PWD-Guidelines.pdf), the right to [accessibility in government examinations](https://main.sci.gov.in/supremecourt/2019/19177/19177_2019_36_1503_26115_Judgement_11-Feb-2021.pdf), and the right to [equal opportunities](https://www.cbic.gov.in/resources/htdocs-cbec/deptt_offcr/draft%20equal%20opportunity%20policy.pdf;jsessionid=A3DCDAAA5A6EE31230C56D482AC4349F).

Section 4 of the Act specifically protects the right to equality of children and women with disabilities.

## Protection of Persons with Disabilities

Sections 6, 7 and 8 of the Act are concerned with the protection of persons with disabiltiites from cruel treatment, violence, exploitation, and effects of disasters.

In response to acts of violence which against persons with disabilities by private individuals, section 7 lays down substantive and procedural rights of persons with disabilities and duties of police officers in the event of an act of violence. This has been expanded to include the provision to [free legal aid](https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1814545).

Section 8 of the act concerns the protection and safety of persons with disabilities during disasters. This aim is furthered by the [National Disaster Management Guidelines on Disability-Inclusive Disaster Risk Reduction](https://www.scdisabilities.org/pdf/Guidelines%20on%20Disability%20Inclusive%20Disaster%20Risk%20Reduction.pdf.pdf), 2019, which aims to include disabled persons in various dimensions of disaster risk reduction including:

1. Data and Resource Mapping
2. Policies, planning and strategies
3. Adoption of universal design principles, facilitation of accessibility and access to assistive technology
4. Preparedness and mitigation strategies
5. Early warning system
6. Search, rescue and evacuation
7. Access to relief
8. Rehabilitation and reconstruction
9. Addressing of needs of specific sections of persons with disability, such as women and girls with disabilities, children with disabilities, elderly persons, SC, ST, LGBT persons with disabilities, persons with psychosocial disabilities, etc
10. Decision making by persons with disabilities and their Organizations
11. Knowledge and capacity building for care-givers

## Community, Home and Social Rights of Persons with Disabilities

Persons with Disabilities often face difficulties in integrating into the community and social lives of people around them. The Ministry of Urban Development, recognising the need to ensure equitable, easy access to persons with disabilities, adopted the [Harmonised Guidelines and Space Standards for Barrier-Free Built Environment for persons with Disability and Elderly Persons](https://cpwd.gov.in/publication/harmonisedguidelinesdreleasedon23rdmarch2016.pdf), 2016, which provide a practical framework to facilitate design of spaces for persons with disability and cover a wide range of disability groups. These guidelines run alongside Section 5 of the RPwD Act, which requires that –Government endeavour to ensure accessible living spaces for persons with disabilities.

The Government of India has also implemented various schemes to ensure community living of persons with disabilities. The [Gharaunda scheme](https://thenationaltrust.gov.in/content/scheme/gharaunda.php), a group home for adults with disabilities, provides an assured home and minimum quality of care services throughout the life of the person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities with adequate and quality care service with acceptable living standards including provision of basic medical care from professional doctors. Gharaunda Centre should provide vocational activities, pre-vocational activities and assistance for further training. The [Sahayogi Scheme](https://thenationaltrust.gov.in/content/scheme/sahyogi.php) aims at setting up Caregiver Cells (CGCs) to provide training and create a skilled workforce of caregivers to provide adequate and nurturing care for Person with Disabilities (PwD) and their families who require it. The [Badhte Kadam Scheme](https://thenationaltrust.gov.in/content/scheme/badhte-kadam.php) aims to create community awareness, sensitisation, social integration and mainstreaming of Persons with Disabilities.

## Accessibility in Voting

Section 11 of the RPwD Act requires that The Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them. The Election Commission of India [assures](https://ecisveep.nic.in/pwd/faqs-for-voters-with-disabilities/faqs-for-voters-with-disabilities-r43/) certain ‘Assured Minimum Facilities (AMF)’ at polling stations, including Signage, a help desk, polling booths at ground floor, an obstacle free wide levelled pathway from entrance to voting compartment, ramps, Accessible Toilets, Drinking Water, Separate Entry and Exit, Lighting, accessible furniture, braille ballot guide, adjustable braille embossed EVMs, wheel chairs, booth volunteers and display of accessible posters on information pertaining to voting.

## Education

Recognising the importance of accessible education, Chapter III of the RPwD Act is dedicated to safeguarding the right to education of persons with disabilities. It requires governments endeavour that all educational institutions funded or supported by them be accessible to persons with disabilities, accommodate for the needs of students with disabilities, support individual needs of these students, detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them, monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability, and provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs. Section 18 of the Act also extends these facilties to adult education.

The government of India has undertaken various schemes to promote education in the disabled. The [Disha Scheme](https://thenationaltrust.gov.in/content/scheme/disha.php) is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act and aims at setting up Disha Centres for early intervention for Person with Disability (PwD) through therapies, trainings and providing support to family members. The [Gyan Prabha Scheme](https://thenationaltrust.gov.in/content/scheme/gyan-prabha.php) encourages higher education in people with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities by funding their educational endeavours.

## Skill Development and Opportunities

Chapter IV of the RPwD Act concerns the skill development and employment of persons with disabilities.

Section 19 of the RPwD Act requires the government to formulate schemes and programmes to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.[The National Action Plan for Skill Development of Persons with Disabilties](https://disabilityaffairs.gov.in/upload/uploadfiles/files/NAP(2).pdf) furthers this goal by partnering with skill training providers to improve skill development and employability. As of January, 2022, the Department of Empowerment of Persons with Disabilities has engaged with [54 such partners](https://disabilityaffairs.gov.in/upload/uploadfiles/files/List%20of%20Valid%20ETPs%2024Mar22.pdf).

The National Trust of India has also implemented the [Prerna Scheme](https://thenationaltrust.gov.in/content/scheme/prerna.php), which aims at providing funds to participate in events such as exhibitions, melas, fairs, etc. to sell the products made by PwDs.

## Health Care

Section 25 of the Act requires that governments take action in ensure affordable, barrier free and prioritised healthcare to persons with disabilities. The Ministry of Health and Family Welfare’s [Accessibility Standards for Healthcare](https://main.mohfw.gov.in/sites/default/files/Accessibility%20Standard%20for%20Healthcare%20%281%29_0.pdf) require that hospitals take special efforts to facilitate the treatment of persons with disabilities, including special training of staff, accessible premises, and affordable services.

The National Trust has further incorporated the [Niramaya scheme](https://thenationaltrust.gov.in/content/scheme/niramaya.php), which aims to provide affordable Health Insurance to persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. All enrolled beneficiaries will get a health insurance cover of up to Rs. 1.0 lakh as defined in the chart OPD treatment including the medicines, pathology, diagnostic tests, etc, Regular Medical checkup for non-ailing disabled, Dental Preventive Dentistry, Surgery to prevent further aggravation of disability, Non- Surgical/ Hospitalization, Corrective Surgeries for existing Disability including congenital disability, Ongoing Therapies to reduce impact of disability and disability related complications, Alternative Medicine and Transportation costs.

# Statutory Bodies for the Protection of Persons with Disabilities

The RPwD Act creates a procedure for implementation within itself, forming 6 authorities responsible for undertaking various responsibilities under the act.

## Central and State Advisory Boards

Chapter XI of the RPwD Act provides for a Central Advisory Board, constituted by the central government, to act as the national-level consultative and advisory body on disability matters, and facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

The act specifies 7 functions of the boards:

1. To advise the Central Government and the State Governments on policies, programmes, legislation and projects with respect to disability;
2. To develop a national policy to address issues concerning persons with disabilities;
3. To review and coordinate the activities of all Departments of the Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;
4. To take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the national plans;
5. To recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities vis-a-vis information, services and the built environment and their participation in social life;
6. To monitor and evaluate the impact of laws, policies and programmes to achieve full participation of persons with disabilities; and
7. To take on such other functions as may be assigned from time to time by the Central Government.

Chapter XI of the Act also creates State Advisory Boards toconduct the same functions at the state level.

## Chief and State Commissioner

Chapter XII of the RPwD Act creates the offices of a Chief and State Commissioner, entrusted with reviewing the situations of persons with disabilities and recommending solutions, promoting awareness of the rights of persons with disabilities and the safeguards available for their protection and study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation.

## National and State Funds for Persons with Disabilities

Chapter XIV of the Act creates the National Fund for Persons with Disabilities. This incorporates funds from the Central government, as well as those received by private organisations. Section 87 of the Act further provides for auditing of the fund to ensure financial transparency. Chapter XV of the Act creates similar funds at a state level.

## Scheme for Implementation of the Rights of Persons with Disabilities Act, 2016

The RPwD Act creates various obligations on the government, from healthcare, to education, to accessibility, it becomes obligates the government to ensure the rights of persons with disabilities. To achieve these goals, the Ministry of Social Justice and Empowerment undertook [the Scheme for Implementation of the Rights of Persons with Disabilities Act, 2016](https://disabilityaffairs.gov.in/content/upload/uploadfiles/files/RevisedSIPDAGuidelines3.pdf).

In August, 2021, the Standing Committee on Social Justice and Empowerment submitted its report on the [Assessment of Scheme for Implementation of the Rights of Persons with Disabilities Act](http://164.100.47.193/lsscommittee/Social%20Justice%20&%20Empowerment/17_Social_Justice_And_Empowerment_23.pdf), 2016. It noted that SIPDA sub-schemes have undergone several revisions since the Act's implementation. There are now 13 sub-schemes that fall under SIPDA. The Committee noted that SIPDA has undergone many amendments, which has complicated implementation and made it challenging for stakeholders and implementing agencies to comprehend new procedures and directives. It further pointed out that, while sub-schemes under SIPDA have more than doubled between 2016-17 and 2021-22, the budgetary allocation for SIPDA has increased by only about 9%).

# Challenges faced by Persons with Disabilities in India

Persons with Disabilities, along with structural and instuttional hardships, face severe social stigmatization. In its [Annual Report](https://disabilityaffairs.gov.in/content/upload/uploadfiles/files/MSJE%20Annual%20Report%202022%20English.pdf) on, the Ministry of Social Justice and Empowerment’s Department of Empowerment of Persons with Disabilities, noted “Bringing an attitudinal change in perception of general public towards Divyangjan remains the biggest challenge of the Department. Awareness generation is therefore key to change the mindset not only of the general public but also of persons with disabilities to increase their self-confidence.”

Along side social issues, persons with disabilities are affected by lack of implementation of laws and schemes by central and state governments. In a recent [incident](https://www.newsclick.in/miles-go-dignified-treatment-disabled-travellers), the Indigo Airlines prohibited a mentally disabled child from boarding a flight, sighting security concerns. Similarly, in 2012, Jeeja Ghosh, a disability rights activist and frequent traveller, was deboarded from a Spicejet flight, in spite of being declared fit for travel on medical examination. A recent [newspiece](https://www.thehindu.com/news/national/govt-advisory-board-on-disability-not-re-constituted-since-nov-2020/article65503927.ece) highlighted the fact that The Central Advisory Board on Disability, which is mandated to meet every six months under the Rights of Persons with Disabilities Act, 2016, has not been re-constituted since the previous board’s three-year term ended in November 2020. The Human Rights Watch [noted](https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused) that disabled women and girls are compelled to enter mental hospitals and institutions, where they must deal with unhygienic surroundings, run the danger of physical and sexual assault, and endure forced medical procedures like electroshock therapy.

# Conclusion

In India persons with disabilities are strongly protected by the law. Not only are their rights protected by the Constitution, there are four national legislations dealing with persons with disabilities namely, Rehabilitation Council of India Act, 1992, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; the Rights of Persons with Disabilities Act, 2016 and Mental Healthcare Act, 2017.

Yet, the primary challenged faced by India lies in the enforcement and implementation of these laws. Along with flagrant violations of statutory requirements, government schemes under these laws often lie untouched or unfinisished. The [2022 Draft National Policy for Persons with Disabilities](https://disabilityaffairs.gov.in/upload/uploadfiles/files/Draft%20Copy%20New%20National%20Policy%20May%202022%20.pdf) aims to reduce these challenges by ‘resource mobilization at the State and Central level for undertaking disability specific inclusive activities.’ However, these words seem merely ambitious, being reflected almost exactly in the [2006 policy](https://www.disabilityaffairs.gov.in/content/viewpage/national-policies.php).

One of the primary causes for the failure of these laws and policies is the lack of sanctions against non-compliance. The way forward for human rights organisation, civil societies and interested individuals to ensure the implementation of India’s laws protecting persons with disabilities is increased judicial activism, which has proved an effective tool for implementation of human rights.